

Lorimar Productions, Inc. and Production Officers and Accountants Guild Local 717, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Petitioner. Case 31-RC-4957

September 1, 1981

DECISION ON REVIEW

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On January 27, 1981, the Regional Director for Region 31 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the Petitioner's requested unit of all estimators and production coordinators employed by the Employer at its facilities located in Culver City and Burbank, California, rejecting the Employer's contention that these employees are confidential and/or managerial employees. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision on the grounds, *inter alia*, that he made erroneous findings of fact and departed from officially reported precedent. The Petitioner filed an opposition thereto.

By telegraphic order dated February 25, 1981, the request for review was granted with respect to the confidential status of production coordinators and denied in all other respects. The election was conducted as scheduled on February 26, 1981, and the ballots impounded and segregated.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the briefs filed by the Petitioner and the Employer, with respect to the issue under review, and makes the following findings:¹

The Employer is engaged in the production of various motion pictures and television programs. Each motion picture and television program has a unit production manager (hereinafter referred to as UPM) who is in charge of the production. Each UPM is assisted by a production coordinator (hereinafter referred to as PC). The UPM schedules the work to be done, and is responsible for budgeting the show, and hiring, firing, and disciplining the

crew members. He also negotiates contracts with those employees who are paid above the union scale and individuals who are hired at distant locations. The record indicates that approximately 80 percent of the employees negotiate such individual above-scale contracts with UPMs. UPMs are involved in the settlement of grievances. At the first step they act on their own, and in the second step serve as an Employer participant.

The Regional Director finds that the UPMs are not individuals who formulate and determine management policies. To support such a finding, he noted that they are constrained by predetermined limits set by higher management, although such limits are not necessarily formally set forth. Thus, he concluded that the PCs who assist UPMs are not confidential employees. We disagree.

With regard to limitations placed on UPMs, the following testimony appears on the record:

HO - For instance, let's say—that somebody comes forward with a grievance and says, you know, I missed out on \$10,000 pay that I had coming. Is it within the UPMs' authority to review those facts and to settle that if he agrees with the employee?

Witness - (Dir of Prod): Probably yes, in conjunction with us, (Dir of Prod) and (Prod Mgr) when there is a settlement that is that great.

This testimony indicates not so much a limitation on the UPMs' authority to make and implement labor relations policy, as a commonsense aspect of everyday management activity, i.e., that in an unusual or extreme case an executive might consult with someone else before committing his employer to extraordinary obligations. Every executive's authority is circumscribed by the restraints of possible review or consultation in unusual situations, as well as the parameters of past practice and customs. The mere existence of such implicit outside limitations does not preclude a finding that the managerial employee formulates, determines, and effectuates labor policy.

We do not find that the testimony in this case establishes any significant limitation on the normal discretion exercised by the UPMs when engaged in contract negotiations and settling grievances, or precludes a finding, which we make, that the UPMs are managerial employees.

Having found UPMs to be managerial employees, we turn to the alleged confidential status of the PC who assists the UPM of each show. PCs type, file, answer phones, distribute paperwork, and compile information needed for various documents, such as check requests and work authorizations.

¹ The Employer also filed a "Motion To Strike Evidence Not Adduced at Representation Hearing; Motion to Strike Petitioner's Brief on Review and Motion To Dismiss Petition." The Petitioner filed a brief in opposition thereto. In view of the ultimate finding herein, it is not necessary to rule on this motion as it is now moot.

PCs may also type check requests for grievance settlements, contracts for those individuals who are paid above scale, and other documents, even though the PCs do not participate in the negotiations that culminate in these documents. They also maintain personnel and grievance files for the UPM who is their supervisor.

We have recently reaffirmed our policy that confidential employees are those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. *Kleinberg*,

Kaplan, Wolff, Cohen & Burrows, PC., 253 NLRB 450 (1980). As the PCs herein assist and act in a confidential capacity to the UPMs, we find that they are confidential employees and exclude them from the unit.

Accordingly, the challenges to the ballots of the PCs, which were impounded at the election conducted on February 26, 1981, are sustained and the case is remanded to the Regional Director for the purpose of opening and counting the ballots cast by the estimators and for further appropriate action pursuant to the Board's Rules and Regulations.